

FSA Update

Last week at the FSA

FSA recovers funds for gold mine investors

The FSA has (on 18 July) secured an order against [Sinaloa Gold plc](#) ("Sinaloa") and one of its directors, **Glen Hoover**, who is resident in the USA, requiring them to pay £1,097,092.11 to the FSA for distribution to victims of a boiler room scheme. The final order made by the High Court under sections 380 and 382 of the Financial Services and Markets Act 2000 follows an interim freezing order and injunction obtained by the FSA in December 2010, which froze £127,000 belonging to Sinaloa and Mr Hoover and prohibited them from disposing of any of their assets until the full sum above was paid to the FSA.

No monies have been paid to the FSA since that date, and only £127,000 is available for repatriation. These funds will now be paid to the FSA and distributed between 79 investors who bought shares in Sinaloa, having received promotional material stating that it was raising funds to develop a gold mine in Mexico. The Court found that Sinaloa was a "sham operation", that in fact Sinaloa held no interest in the mine and that it had offered shares to the public without a prospectus. It held that Mr Hoover was knowingly concerned in breaches by Sinaloa, and that up to 90 per cent of the money raised from investors was paid to "boiler rooms" (firms involved in high-pressure sales of

over-valued or worthless shares) and persons associated with him.

Linked proceedings, pursued by Sinaloa's bank and relating to the extent to which the FSA is required to offer a cross-undertaking in damages to third parties when obtaining injunctions against parties such as Sinaloa, are still ongoing. In October 2011, the Court of Appeal ruled that the FSA was only required to undertake to pay costs (i.e. not damages) to third parties such as the bank in this case (see [FSA Update – 24 October 2011](#)). The bank has pursued an appeal to the Supreme Court, which is due to be heard in December 2012.

Comment

The action against Sinaloa and Mr Hoover is the latest in a steady stream of enforcement cases where the FSA has used its civil and/or criminal powers to tackle unauthorised business. The FSA's [Enforcement Annual Performance Account](#) reports that, between 1 April 2011 and 31 March 2012, it took proceedings in 20 unauthorised business cases concerning £165 million of victims' assets. These included the prosecution of Tomas, Kevin and Christopher Wilmot, which led to the imposition of sentences of nine, five and five years respectively. These remain the highest sentences secured by the FSA in its role as a criminal prosecutor. Since the end of the period covered by those statistics, the action against Sinaloa and Mr Hoover is the fourth publicised case in which injunctions and/or restitution have been obtained, and one further individual, [Michael McInerney](#), has

been sentenced to over four years' imprisonment for laundering the proceeds of a boiler room scheme.

Enforcement action has been buttressed by a noticeable upturn in the numbers, visibility and level of detail of communications from the FSA aimed directly at consumers. For example, in April 2012, it proactively [wrote to over 76,000 consumers](#) to warn them that they may be at risk from fraudulent share sale schemes and has since issued a number of specific alerts in relation to particular firms (see [FSA Update 1 May 2012](#)).

This approach in the unauthorised business sphere corresponds with the robust stance which the FSA is taking towards regulating the relationship between authorised firms and consumers. In readiness for the enhanced product intervention powers which it expects the Financial Conduct Authority ("FCA") to receive, it has combined enforcement action with increasingly intrusive supervision and guidance where it has concerns

Key issues

- FSA recovers funds for gold mine investors
- FSA signs memorandum of understanding with Reserve Bank of India
- FSA issues policy statement on EU emissions trading
- House of Lords continues to scrutinise Financial Services Bill
- HM Treasury consults on strategy for reforming payments services

as to the suitability of particular products for particular groups of consumers (see [FSA Update - 1 May 2012](#)).

The action against Sinaloa and Mr Hoover, and other similar unauthorised business cases, relate to historic conduct, and the costs of pursuing them are likely to exceed the amounts likely to be recovered. However, the FSA's persistence in pursuing them (and in contesting associated legal challenges) is an indicator of its commitment to tackling unauthorised business as part of its wider consumer protection strategy. Senior figures have, in [recent briefings](#) on enforcement strategy, indicated that they intend for the FSA and in due course the FCA to continue to intensify this approach, both in relation to authorised and unauthorised firms.

Final Notices: -

- On 16 July, the FSA cancelled the Part IV permission of [Quintillion Asset Management Limited](#) and the registrations of [GMEX Europe Limited](#) and [Swift Travels & Estate Agents Limited](#) as small payment institutions under the Payment Services Regulations 2009 for non-payment of fees and levies.
- On 17 July, the FSA cancelled the Part IV permission of [Brian Lambert](#) following his conviction for conspiracy to defraud and cancelled the permission of [John McNamara](#), who had not conducted any regulated activity since July 2010.

FSA signs memorandum of understanding with Reserve Bank of India

The FSA has (on 17 July) entered into a [memorandum of understanding](#) with the Reserve Bank of India ("RBI") in relation to supervisory activities. The agreement, which will also bind the FSA's successor organisations, sets out the circumstances in which information may be requested and exchanged, and the procedure governing such exchanges.

Included in the detail of the agreement are specific provisions enabling the sharing of information in relation to the fitness and propriety of individuals applying to act as managers of institutions with a presence in both India and the UK.

It also provides for periodic meetings between representatives of the FSA (and/or its successor organisations) and the RBI to discuss general supervisory developments and gives details of how the authorities propose to work together to manage crises affecting institutions with a presence in both jurisdictions.

FSA issues policy statement on EU emissions trading

The FSA has (on 20 July) issued a policy statement ([PS 12/12](#)) summarising the responses received to its consultation issued in March 2012 ([CP 12/6](#)) on authorising and supervising firms which intend to bid for emissions products across the EU on auction platforms. The policy statement contains "near final" rules, which will be finalised at an FSA board meeting on 26 July.

Further afield

House of Lords continues to scrutinise Financial Services Bill

The House of Lords has (on 18 July) [debated](#) the provisions of the Financial Services Bill for a fourth day. Amendments proposed included those relating to the creation of a code of conduct for individuals working in the financial services industry, the reform of measures aimed at consumer education and improving financial literacy, arrangements for co-operation between the FCA and the Office of Fair Trading and the regulation of claims management companies.

Particularly lengthy debate also took place on the issue of the duty of care which firms should owe to consumers. Opposition figures proposed the inclusion of specific wording in the FCA's consumer protection objective stating that the duty of care owed to particular consumers should be assessed by reference to their "ability, disability and vulnerability". However, the need for this wording was rejected by the government, which argued that requirements on firms, including the general requirement under Principle 6 of the FSA's Principles for Businesses to treat customers fairly, are sufficient to ensure adequate protection of consumers' interests.

The House of Lords will continue to debate the Bill's provisions on 25 July.

HM Treasury consults on strategy for reforming payments services

HM Treasury has published a [consultation paper](#) inviting views on

three options for reforming the regulation and governance of payments networks (the payments process from payer to payee) in the UK. The consultation follows the Treasury Select Committee's recommendation that the Payments Council should be brought within the scope of financial regulation to ensure that it is subject to effective scrutiny by a regulatory body.

The proposed reforms are intended to protect those who rely on more traditional payment mechanisms by ensuring that consumer concerns are taken into account. The government's preferred option is the creation of a new body (the Payments Strategy Board) to monitor and make recommendations to the payments industry. It would be run by a mixture of senior industry and non-industry figures, including representatives of consumer organisations.

The consultation closes on 10 October 2012.

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